IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5142 OF 2005

Sidharath Mehta Petitioner
vs.
Tejal Mehta Respondent

Mr.R.V.Govilkar for the petitioner.

Mr.Vivek Kantawala with Mr.Leon Samuel with Mr.Asif Lompwala i/b.M/s.Advani & Co. for the respondent.

CORAM : S. A. BOBDE,J.

DATED : 19th October 2005

P.C.

Heard.

. Rule, returnable forthwith.

. Mr.Vivek Kantawala, learned counsel waives service of rule for the respondent.

. By consent, rule is heard finally at this stage.

2. The petitioner has challenged the impugned order dated 11th June 2005 passed by the Family Court, Bandra in Interim Application No.143/2003. By the impugned order, the Family Court has, upon evidence, directed the petitioner to pay a sum of Rs.50,000/- per month towards interim maintenance to the respondent-wife and a further sum of Rs.20,000/- per month each to two minor children

towards their interim maintenance from the date of the application i.e. 28.04.2003. The total amount directed to be paid comes to Rs.90,000/- per month. It appears that the dispute between the parties could not be successfully mediated upon. The question of interim maintenance must therefore be considered on merits.

3. The trial Court has considered the income of the petitioner in paragraphs 11 to 17 of its order. It appears that the petitioner's income is fluctuating. For instance, for the year 2000-2001, it was Rs.14,60,294/- and the petitioner has shown that he owed a sum of approximately Rs.66,38,754/- to his own family members. He has shares in 32 companies valued about Rs.13,86,353/- and debentures worth Rs.2,18,438/-. The return shows that he owns four flats, including one at Ahmedabad.

4. The income for the year 2001-2002 shows that the gross total income is Rs.6,48,028/-. The petitioner has shown that he owes a sum of Rs.29,11,181.56 to his family members and relation. For the year 2001-2002, the value of his shares was shown as Rs.24,51,231/- and the salary was shown as Rs.23,800/-.

5. The petitioner has shown his income for the year 2003-2004 as Rs.13,61,400/- and that he owed a sum of Rs.89,27,328.57 to his family members. His shareholding

appears to have increased and he has earned dividend of Rs.18,91,367/-. He also sold his flat at Delhi for Rs.21,00,000/-.

6. The income for the year 2003-2004 was shown as Rs.2,09,503/- only and that he owed a sum of Rs.35,00,000/- to his family members. Apparently, he has paid off Rs.50,00,000/- from the last year's income where he showed that he owed a sum of Rs.89,27,328.57. In this year, he has also sold a flat for Rs.14,51,920/- and has gifted Rs.17,77,533/- to his mother. His fixed deposits being Rs.6,15,050/-.

7. Similarly, for the year 2004-2005. he has shown his income as only Rs.1,34,046 and that he owed a lumpsum of Rs.82,09,835.71 to his family members. He appears to have gifted shares to his mother in the sum of Rs.20,85,500/-.

8. Mr.Govilkar, the learned counsel for the petitioner, stated that the petitioner's income is such that he cannot bear the financial burden of paying Rs.40,000/- per month to the respondent. I am not inclined to accept this submission, having regard to the observations of the trial Court. It is noteworthy that the dispute between the parties began some time in the year 2000 and the petition was filed some time in the year 2003. It is in the year 2003 that the petitioner

has shown that he owes a sum of Rs.89 lacs to his family members and thereafter a sum of Rs.82 lacs in the year 2004-05, as observed by the trial Court in paragraphs 13 and 15. The petitioner's representation about his financial position does not inspire much confidence.

9. In addition to the above, it appears that he holds another PAN Card which shows that he received a salary of Rs.95,000/- per annum from M/s.Mahavir Distributors which is a concern owned by him in Pune. The trial Court has observed in paragraph 16 that the petitioner owns about 8 flats which is disputed by the learned counsel for the petitioner.

10. It must be borne in mind that the trial Court has come to a specific conclusion, though prima facie, that the petitioner's annual income is much more than what is shown and that the second PAN Card acquired by him is in order to show false and misconceived statements to the Court. These observations do not give any credit to the petitioner.

11. On the other hand, it appears that the respondent's claim that their expenditure is about Rs.99,270/-, according to the statement at page 60 to the petition, appears to be a little excessive. One of the items shows a fund for medical expenditures on a monthly basis of Rs.50,000/- and certain recurring expenses such as

Rs.1,000/- on each Sunday also appears to be slightly on the higher side. Having regard to the overall circumstances of the case and having regard to the fact that this is an interim order, I consider it appropriate to reduce the amount.

12. Mr.Kantawala, the learned counsel for the respondent, submits that the respondent would be able to go on till the decision of the main case with a lessor amount i.e. about Rs.45,000/-.

13. Having regard to a broad assessment of the status of the parties and the observations of the trial Court which has perused the income-tax returns and the properties owned by the petitioner, I consider it appropriate in the interest of justice that pending the decision of the matrimonial dispute between the parties, the petitioner shall pay a sum of Rs.40,000/- to the respondent per month. The respondent would be at liberty to appropriate the said sums according to her need and those of her children, in the meanwhile. The trial Court has directed the petitioner to pay a sum of Rs.50,000/- to the respondent towards costs. I consider it appropriate to reduce the costs and direct the petitioner to pay Rs.20,000/- towards costs to the respondent. It is made clear that the aforesaid amount is directed to be paid by the petitioner to the respondent purely as an interim arrangement and without

prejudice to the rights of the parties to contest the actual maintenance that may be found payable to the respondent.

14. Having regard to the circumstances of the case, I consider it expedient, in the interest of justice, to direct that Family Court to decide the matrimonial dispute No.C-113/2003, as expeditiously as possible, and in any case not later than six months from the next date. In addition, it is made clear that the respondent shall be entitled to claim actual medical expenses as may be incurred from the petitioner in regard to herself and two minor children. The petitioner shall reimburse such bills within 15 days from the presentation of the bill. The learned counsel for the respondent submits that the petitioner has not paid arrears at the rate of Rs.90,000/- per month as ordered by the Family Court with effect from 28.4.2003. Having regard to the observations above, the petitioner is directed to pay the said arrears at the rate of Rs.40,000/- per month with effect from 28.4.2003.

15. Writ petition is disposed of in the above terms.

(S. A.BOBDE,J.)